IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9455 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

MOHAMEDHUSEN DILAWARBHAI MIR

Appearance:

1. Special Civil Application No. 9455 of 1993

MR SK BUKHARI for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/04/2002

ORAL JUDGEMENT

Heard learned advocates for the parties. By way of this petition, the petitioner has challenged the award made by the labour court concerned in Reference No. 846 of 1990 dated 19th March, 1993 wherein the labour court

has granted reinstatement with continuity of service, with 50 per cent of the back wages for the intervening period, w.e.f.10th April, 1989. Learned advocate Mr. Mehta appearing for Mr. Bukhari for the petitioner has submitted that the respondent workman was dismissed from service in view of his misconduct of having remained absent without prior permission from 1st May, 1984 till the date of dismissal. He submits that for the said misconduct, he was served with charge sheet and after completion of departmental inquiry, he was dismissed from service on 9th October, 1984 and he raised industrial dispute belatedly, after about five years' delay and, therefore, according to him, the labour court has erred in granting 50 per cent back wages to the respondent workman. He has submitted that in similar case, this Court (Coram : M.S. Shah,J.)has set aside the directions of back wages in special civil application no. 519 of 1994 by order dated 4th April, 1997. According to him, the labour court has committed error in granting such relief in view of delay in raising dispute and, therefore, award is required to be set aside.

Initially, notice was issued in this petition and ad.interim relief was granted by order dated 15th September, 1993. Thereafter, rule was issued on 1st October, 1993 and interim relief granted earlier was made limited only qua back wages and directions were issued that the respondent is required to be reinstated in service within three weeks from the date of the said order. As a consequence of the said order, the workman must have been reinstated in service.

I have considered the submissions made by Mr. Mehta. I have also perused the award in question made by the labour court. It was alleged against the respondent that he remained absent while working at Dakor Depot with effect from 1st May, 1984 and report was submitted by the authority concerned on 20th June, 1984 and registered letter was sent to the respondent and it was found that the reply was given by the father of the respondent workman that the concerned workman has not been in the town and thereafter, charge sheet dated 7th July, 1984 was issued which was received back by the corporation as the respondent was not remaining present at the address. The inquiry was completed on 30th July, 1984 and was then adjourned to 27th August, 1984when AWS Shri H.K. Patel was examined and thereafter, show cause notice was served upon the respondent and then order of dismissal was passed. Upon perusal of the award in question, it appears that the statement of claim was filed by the respondent before the labour court at Exh. 4 that he was

sick and was, therefore, unable to resume the duty and that for getting medical treatment, he had gone out of the station and was not available in the town and as such, he has not received any notice or charge sheet issued by the corporation. Before the labour court, the corporation has produced documents vide documentary evidence list Exh. 9 and no oral evidence has been led by the corporation but the respondent was examined before the labour court at Exh. 11 and thereafter, the respondent has not challenged legality, validity and propriety of the departmental inquiry but the findings were challenged by the respondent. Thereafter, the labour court examined the question as to whether the punishment of dismissal from service could be considered to be proportionate or not for the misconduct of having remained absent for five months. The labour court come to the conclusion that the respondent was sick and was out of station for getting medical treatment and that he has not received any communication from the corporation and yet the corporation has proceeded with the inquiry and completed the same in absence of the respondent and then passed the order of dismissal. The labour court, considering these aspects of the matter, come to the conclusion that the order of dismissal was not proportionate and, therefore, it granted reinstatement in service with 50 per cent of the back wages with effect from 10th April, 1989 and the back wages for the period prior thereto were denied by the labour court in view of delay in raising of dispute. This order was passed by the labour court in exercise of the powers under section 11A of the I.D. Act, 1947. Looking to the facts and circumstances of the case, as stated earlier, the respondent was dismissed from service for his having remained absent from duty without prior permission for a period of more than five months due to sickness; he was not able to resume the duty and he was out of station for getting medical treatment and no notice or charge sheet was received by him.

Learned advocate Mr. Mehta has relied upon the aforesaid decision of this court wherein this court has held that the workman was remaining absent for a period of more than one year without prior intimation to the corporation and this aspect has been taken into account by this court that the conduct of the workman was such that he is not entitled to the relief of back wages for intervening period. In this case, the respondent was sick and that fact was believed by the labour court on the basis of the oral evidence and no evidence contrary to that evidence has been brought by the corporation before the labour court. Therefore, in view of these

facts of the present case, that decision of this court cited by Mr. Mehta is not helpful to the corporation. This aspect has been considered by the apex court as per the decision reported in AIR 1994 SC 215 and 1999 SCC Lab and Service 666. Therefore, in view of the decisions of the apex court as aforesaid and also considering the fact that the labour court has taken care of delay aspect while granting relief and has granted no back wages for the period prior to the filing of the complaint and also considering the fact that the labour court has granted only 50 per cent of the back wages from 1989, according to my opinion, no interference is required in exercise of the powers under Article 226/227 of the Constitution of India. No other submissions were made by Mr. Mehta. Mr.Mehta has not been able to point out any infirmity apparent on the face of the record. He has also not been able to point out any jurisdictional error and/or procedural irregularity committed by the labour court.

Further, this court is having very limited powers to interfere with the findings of fact recorded by the labour court or the tribunal in exercise of the powers under Article 226/227 of the Constitution. Unless such findings are perverse, this Court cannot interfere with the same. Therefore, there is no substance in this petition and the same is required to be rejected.

FOr the reasons recorded hereinabove, this petition is dismissed.Rule is discharged. Interim relief shall stand vacated. There shall be no order as to costs.

1.4.2002. (H.K. Rathod,J.)

Vyas